

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JOSEPH BREITFELDER	:	Case No. C-1-01-617
	:	
Plaintiff	:	JUDGE BECKWITH
	:	
vs.	:	MAGISTRATE HOGAN
	:	
HAMILTON COUNTY SHERIFF	:	<u>COUNTY DEFENDANTS' MOTION</u>
SIMON LEIS, et al.	:	<u>FOR CONTEMPT</u>
	:	
Defendants	:	

Hamilton County defendants hereby move this Court for an order finding the plaintiff to be in contempt of court. On September 11, 2003, this court ordered plaintiff to pay to defense counsel the physician's cancellation fee caused by Mr. Breitfelder's failure to appear at a scheduled IME appointment, without notice. (Doc. 41) As the result of his failure to appear, the defendants were required to pay to the doctor a late cancellation fee of \$250.00. In addition, plaintiff was ordered to pay the attorney fees of defense counsel in bringing the motion for payment of the fee. The fees awarded amounted to \$420.00, for a total payment due of \$670.00.

As of January 13, 2004, plaintiff has failed to pay any amount as required by the Court. Therefore the plaintiff is in contempt of court and defendant respectfully requests that the Court find the plaintiff in contempt, order plaintiff to pay the late fee and attorney fees immediately, order the plaintiff to pay to the defendants the additional sum of \$150.00 for defendant's attorney fees expended in bringing this motion and order the dismissal of plaintiff's claims.

Respectfully submitted,

/s/ Stephen K. Shaw

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MEMORANDUM

On September 11, 2003 this court ordered plaintiff to pay to the defendant the sum of \$670.00 for attorney fees and the expert witness cancellation fee that resulted from plaintiff's failure to appear for his Independent Medical Examination. The cancellation fee was \$250.00 and the attorney fees expended in the motion to collect the fee was \$420.00. (Doc. 41)

On October 6, 2003 counsel for defendant sought to relieve plaintiff of a portion of this burden by offering to accept prompt payment of the cancellation fee so that the County would not be required to pay this expense, then go through the paperwork of accounting for the plaintiff's payment of this fee. In addition, defendant sought to encourage the settlement of the case by making a gratuitous offer to reduce the amount to be paid, in the hopes of creating a positive atmosphere for the settlement of the case. (Affidavit of Stephen K. Shaw, Exhibit 1)

As of December 15, 2003, defendant received no response to this offer. As a result, the County was required to pay the expense and seek reimbursement. In addition, the parties had by then briefed the issues on summary judgment without any progress toward settlement. Therefore, counsel for the defendants wrote to plaintiff's counsel on December 15, 2003 to advise him that

the offer of a reduction in the amount payable was withdrawn. The letter reminded plaintiff's counsel that the payment was due on December 31, 2003. Plaintiff's counsel did not respond to this letter or pay the sums due pursuant to this Court's order. (Affidavit of Stephen K. Shaw, Exhibit 2)

As of January 6, 2004, no payment had been received. Therefore, a paralegal in the office of the Prosecuting Attorney sent a letter on that date reminding Mr. Bernard of the overdue payment. No response was received to this letter. As of January 13, 2004, plaintiff has not paid the amount due and has not responded to any of defendants' correspondence on the matter. (Affidavit of Stephen K. Shaw, Exhibit 3)

Defense counsel is expending unnecessary time seeking recovery of the funds which the court ordered paid by December 31, 2003. Defendants' counsel has expended in excess of one hour in preparing this motion and the supporting affidavit and seeks recovery of \$150.00. (Affidavit of Stephen K. Shaw)

Based upon the plaintiff's apparent intentional refusal to abide by this Court's order, Defendant respectfully requests that the Court find the plaintiff to be in contempt, order the payment of the funds due according to this court's original order, order the payment of an additional \$150.00 in attorney fees for the bringing of this Motion, and order the dismissal of plaintiff's claims, without prejudice.

Respectfully submitted,

/s/ Stephen K. Shaw
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been filed with the Court via the CM/ECF Electronic filing system and a copy will be electronically e-mailed to counsel of record on this 13th day of January, 2004.

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/s/ Stephen K. Shaw
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